



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/029,042	05/15/1998	SUN-YOUNG KIM	003364.P001	5584

7590 04/01/2004

BLAKELY SOKOLOFF TAYLOR & ZAFMAN  
12400 WILSHIRE BLVD  
7TH FLOOR  
LOS ANGELES, CA 900251026

EXAMINER

DEBERRY, REGINA M

ART UNIT	PAPER NUMBER
----------	--------------

1647

DATE MAILED: 04/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/029,042

Applicant(s)

KIM ET AL.

Examiner

Regina M. DeBerry

Art Unit

1647

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 7 and 17.

Claim(s) withdrawn from consideration: \_\_\_\_\_.


8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Continuation of 5. does NOT place the application in condition for allowance because: claims 7 and 17 stand rejected under 35 USC 112, first paragraph, enablement. The basis for this rejection is set forth at pages 3-4 of the previous Office Action (17 September 2003). Applicants state that with respect to pending claims 7 and 17, Applicants amend these claims to reference a QT35-N4D4 cell line. The cell line corresponds to the deposit at accession number KCTC 02778P in International Depository Authority, Korea Research Institute of Bioscience and Biotechnology Korean Collection for Type Culture under the Budapest Treaty.

Applicants' arguments have been considered but are not deemed fully persuasive. As was stated in the previous Office Action, QT-VC is a quail fibrosarcoma established cell line isolated by the inventors (page 3, lines 6-12) and QT-N4D4 is the quail fibrosarcoma cell line which is stably expressing SY-EPO cDNA (page 21, lines 23-28, Figure 8 and page 22, line 9-page 23, line 9). The Examiner stated in the previous Office Action that there has to be two deposits for the novel established cell lines (QT-VC and QT-N4D4).

Applicants stated that the deposited cell line referenced at accession number KCTC 02778P in International Depository Authority, Korea Research Institute of Bioscience and Biotechnology Korean Collection for Type Culture under the Budapest Treaty, supported by the depository document filed in connection with the Application is QT35-N4D4. QT35-N4D4 was produced by transfecting QT-VC with an SY-EPO expression vector. This is supported in the Application, for example, at page 22, line 9 through page 23, line 7. The deposited QT35-N4D4 is the same as the QT-N4D4 disclosed in the specification. Applicants state that the two characters "35" were inadvertently omitted due to a typographical error.

However, Applicants still have not provided a deposit for QT-VC which was also isolated by the Inventors. The amendment to the specification submitted 22 December 2003 fails to disclose how to obtain quail fibrosarcoma line QT-VC. The instant cell line is an established avian cancer cell line with unique genetic material. As many cancers are aneuploid, it would be virtually impossible for one skilled in the art to make (isolate clone) the identical QT-VC cell line. Lastly, the Examiner also stated in the previous Office Action that the specification is not enabled for any QT-VC or now for any QT35-N4D4 cell line, only those cell lines deposited with an accession number. The instant claims encompass any QT-VC or any QT35-N4D4 cell line because the claims fail to recite deposit numbers. The scientific reasoning and evidence as a whole indicates that the rejection should be maintained.

  
YVONNE EYLES  
SUPERVISORY PATENT  
TECHNOLOGICAL CENTER